Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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CASE NO. 86-73

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1986

BEULAH W. BOOKER,
Petitioner

vs.

EVELYN MOBLEY, M.D.
Respondent

ON PETITION FOR APPEAL TO THE
UNITED STATES SIXTH CIRCUIT

REPLY BRIEF TO PETITION FOR CERTIORARI

BEULAH W. BOOKER

643 MIAMI CHAPEL RD.

DAYTON, OHIO 45408

(513) 228-2550

QUESTION PRESENTED

Whether or not a bailiff is allowed to hold court in the Judge's absent; whether the Constitution permits state court officials and the defendant to hold conference without notifying plaintiff; whether the first amendment allows on to petition the government for redress when one's rights have been violated in state court; whether the statute of limitation for medical malpractice is one year or one year after you receive the report.

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STATEMENT OF THE CASE

In May-June 1982, Petitioner was injured at her place of employment, Delco Moraine, G.M.C., where the Respondent is it's Plant Medical Director, who refused to have Petitioner removed from a job that caused her severe injuries.

On July 23, 1983, Petitioner had surgery on her right hand. On August 17, 1983, Petitioner filed a negligence complaint in the Montgomery County Common Pleas Court, Ohio. On October 4, 1983, Petitioner received a copy of the report from her physician concerning her injuries. On November 14, 1983, a pre-trial conference were held in Judge's chambers by his Bailiff. Dates were set-up for a jury trial for March 12, 1984. On December 4, 1983, a second pre-trial conference was held without notifying Petitioner. The negligence complaint was changed to medical malpractice with an arbritrator,

the previous jury trial dates was vacated by Judge John Kessler, who on September 28, 1984 dismissed the case by the defendant summary judgment, one year statute of limitations. In each of Judge Kessler orders or dismissal they was not signed, they did not bear the signature of a judge.

On May 3, 1985, Petitioner filed a complaint in the United States District Court for the Southern District of Ohio Western Division, Denied Equal Protection of the Law in State Courts, stating she was denied and could not enforce her equal rights in state courts citing 42 U.S.C. 1981 and 42 U.S.C. 1983, and 28 U.S.C. 1443 (1964ed) (1). By order of June 28, 1985, the District Court dismissed the complaint, sua sponte,for want of subject matter jurisdiction. Petitioner appealed this decision to the United States Court of Appeals for the Sixth

Circuit which affirmed the decision of the trial court on January 15, 1986.

ARGUMENT

I. THERE ARE SEVERAL IMPORTANT REASONS WHY THE COURT SHOULD EXERCISE IT'S DISCRETION AND GRANT CERTIORARI.

Petitioner injured her hands and wrists at her place of employment, Delco Moraine, G.M.C. where the Respondent is it's Plaint Medical Director who ignored the injuries. Petitioner filed a negligence complaint in state court. A pretrial conference were held on November 14, 1983, (Appendix A-1), by the Judge Bailiff on orders from the Judge, John Kessler. At this conference a jury trial date was set and agreeded upon by both parties for March 12, 1984,no motion or issues were made by the Respondent to

the fact of a medical malpractice, but a motion made by Petitioner was denied by the bailiff. The Respondent should have objected to the Bailiff holding court out-of-his-profession. According to Webster's Dictionary, a bailiff is a court officer who executes writs, processes, etc and acts as a messenger or usher in court; a judge is a civil officer invested with power to hear and determine causes, Civil and Criminal and to administer justice between parties in courts. At the conference, the Bailiff was performing a job he was not qualified to do, which had so far departed from the accepted and usual course of judicial proceedings.

On December 9, 1983, a second pretrial conference was held between the Respondent and the Judge, John Kessler, where the Petitioner was not notified.

At this conference the complaint was changed from negligence to medical malpractice. Dates that were previously set by the bailiff was vacated by the judge, (Appendix B-1), who was aware that the bailiff was powerless to hold court in his stead, therefore, certiorari should be granted because they departed from the accepted and usual course of judicial proceedings.

Another reason certiorari should be granted, petitioner complaint should have remained a negligence charge. According to Ballantine Law Dictionary, negligence is the failure to perform an established duty which proximately causes injury to the plaintiff, Northern Indiana Transit v. Buck, 228 Ind. 162, 89 NE2d 905, 17 ALR2d 572, also, the failure to exercise the degree of care demanded by the circumstances.

Malpractice by physician or surgeon is, the wrong for which a physician or surgeon is answerable to his patient where it results in injury to the patient. The Respondent was not Petitioner physician she did not diagnosis or treat petitioner, but refused to remove her from a job after being told of the severity it would cause by six (6) doctors. Respondent denied Petitioner her rights by not pulling her off that job, she treated her as a slave. Certiorari should be granted because the statute of limitations for negligence is two (2) years O.C.R. 2305.11, and the statute of limitations for medical malpractice is one year after the discovery, 2305.11 in which to bring a claim. The record will show the court dismissed the case after the bailiff held court.

II. PETITIONER COMPLAINT OF DISCRIMINATION WERE IN THE RIGHT JURISDICTION.

Petitioner were denied equal rights and deprivation of rights, 42 U. S.C. 1981 and 1983, when the state court had the second pre-trial conference without notifing her. They denied her representation and due process and equal protection of the laws. She filed her complaint in the district court because she was denied and could not enforce her equal civil rights in state courts, Georgia v. Rachel, U.S. 384 n. 147, 780; 28 U.S.C. 1443 (1964ed) (1) and (2) in parts; civil right cases provides "against any person who is denied or cannot enforce in the courts of such state a right under any law providing for the equal civil rights of citizens of the United States!" "for any act under color of authority derived from any law providing for equal rights." Petitioner has a right to sue and enforce contracts, and to the full and equal benefits of all laws which is

guaranteed by the Constitution of the United States.

In the Respondent (brief of opposition p-4), he states,"the district court found that petitioner did not contend that respondent personally deprived her of equal protection or any other civil right; that the only claim against respondent arose out of the medical treatment she received from the respondent." Petitioner contends that the respondent denied her a right to enforce the contract between U.A.W. and G.M.C., according to paragraph 72 in parts, "any person who has been incapacitated at his regular work by injury or compensable occupational disease while employed by the corporation, will be employed in other work on a job that is operating in the plant which he can do." The respondent did not treat petitioner as her patient but refused to do what an ordinary purdent person would

do, remove petitioner from the job which caused her severe injuries.

III. PETITIONER WERE DEPRIVED OF HER CONSTITUTIONAL RIGHTS.

In the respondent (brief of opposition, p-5), he stated, "presumably this alleged failure to notify Petitioner of a pre-trial conference violated her Constitutional right of due process of law." In Petitioner (Appendix A,p-1) it will show a pre-trial conference was schedule for November 14, 1983, (Appendix B) will indicate where a second pre-trial conference was held and the changingof the complaint and vacating of all previous dates. Petitioner was deprived of the First Amendment, petition the government for redress of grievance in Federal Court; the Seventh Amendment, trial by jury; the Fourteenth Amendment, due process of law and equal protection of the laws within its jurisdiction and the Thir-

teenth Amendment, neither slavery nor involuntary servitude shall exist in the United States. When Respondent refused to removed Petitioner from the job that caused her severe injuries, she treated her like a slave and violated the thirteenth amendment.

The lower court and respondent changed the complaint to medical malpractice and pick an arbritrator (John Cummings) without petitioner present or agreement which violated her Constitutional rights and deprived her of due process and equal protection of the laws. In Flagg Brothers v. Brooks, 436 U.S. 149, 155 (1978) when a private individual or entity who conspires with state officials to deprive a citizen of his constitutional rights may be held accountable under 42 U.S.C. Section 1983, Martin Marietta Corp. v. Bendix Corp., 690 f.2d 558 (6th cir-1982).

In respondent (Brief of Opposition p-5) he stated, "On September 24, 1984, petitioner filed a motion to postpone the hearing schedule for September 28, 1984." The record will show that on August 31, 1984, respondent also requested a motion for a stay. Petitioner was denied a stay, however, the respondent was granted summary judgment. Petitioner was denied due process and equal protection of the laws.

CONCLUSION

Petitioner is a U.S. citizen, employed by Delco Moraine, G.M.C. where the respondent is it's plant medical director who with knowledge refused to have petitioner removed from a job that severly injured her. Petitioner asserted action in state court where they used a bailiff to perform at a pre-trial conference. Later, the Judge and respondent had a second pre-

trial conference without notifying petitioner. They changed the complaint from negligence to medical malpractice and vacated the previous dates set by the bailiff. Petitioner was denied due process and equal protection of the laws. She filed a complaint of discrimination in the district court petitioning the government for redress and equal protection of the laws. The record will show petitioner was injured due to respondent negligence, who denied petitioner the rights to enforce the contract. Petitioner was denied the right to a jury trial and a right to be represented at the second pre-trial conference, therefore, certtiorari should be granted.

Respectfully submitted,

Beulah W. Booker
Petitioner

APPENDIX

IN THE COMMON PLEAS COURT OF

MONTGOMERY COUNTY, OHIO

NO. 83-2237

BEULAH W. BOOKER, Petitioner,

vs.

DR. EVELYN MOBLEY, M.D., Respondent

(October 26, 1983)

ENTRY SETTING PRETRIAL

November 14, 1983, at

8:45 A.M. (In Chambers)

This matter is hereby set for a pretrial conference, in chambers, on the 14th day of November, 1983, at 8:45 A.M.

APPROVED:

John W. Kessler, Judge

APPENDIX-B

IN THE COMMON PLEAS COURT OF

MONTGOMERY COUNTY, OHIO

NO. 83-2237

BEULAH W. BOOKER, Plaintiff,

vs.

DR. EVELYN MOBLEY, M.D.,Respondent

(December 9, 1983)

ORDER OF REFERRAL TO MEDICAL MALPRACTICE ARBRITRATION

This case is determined to be a medical malpractice claim as defined in O.R.C. (D), and is therefore referred according to the applicable statutes and local rules to John Cumming, the chief arbitrator appointed by this Court.

Dates previously set for discovery, motions, joint pretrial statement, final pretrial conference, and trial are hereby VACATED.

SO ORDERED:

_____

JOHN W. KESSLER, JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the_____ day of September, 1986, three copies of the foregoing document were deposited in a U.S.A. mailbox, with first class postage pre-paid and served upon Robert B. Crew, 2580 Kettering Tower, Dayton, Ohio 45427, Attorney for Respondent, Evelyn Mobley, M. D.

Respectfully submitted,

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